BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
	)	

INITIAL COMMENTS OF
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

On March 18, 2005, the Federal Communications Commission ("FCC" or "Commission") released a Second Further Notice of Proposed Rulemaking ("*FNRPM*") seeking comments on issues related to the Commission's "Truth-in-Billing" rules and State jurisdiction over telecommunications carriers' billing practices.

The National Association of Regulatory Utility Commissioners (NARUC), which represents the interests of those State officials charged with, *inter alia*, oversight of the operation of telecommunications service providers operating in their respective States, respectfully submits these comments to respond to certain issues raised in the *FNRPM*. NARUC has been recognized by Congress[1] and the Courts[2] as an appropriate representative for State commission interests.

[1] See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf.. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

[2] See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985).

Consumers are clearly confused by the way carriers currently list monthly end-user charges on their billing statements. The FCC received over 19,000 comments from individual consumers in response to the NASUCA petition for a declaratory ruling in CG Docket No. 04-208. Indeed, even in the FCC acknowledges in its March 18, 2005 order, that the bulk of telecommunications consumer complaints received by the Commission involve carriers' bills and charges. NARUC is on record urging the FCC to investigate the misleading billing surcharges and we commend the FCC for opening this proceeding. NARUC's July 2004 resolution, attached as Appendix A, also specifically resolves that " . . . monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers. *In addition, that resolution urges the FCC not to preempt States from establishing more stringent standards for consumer protection.*

In response to the notice, NARUC respectfully suggests:

A. *The FCC should require monthly invoices to separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers.*

B. *The FCC should not preempt States from establishing more stringent standards for consumer protection.*

DISCUSSION

The FCC should require monthly invoices to separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers.

The *FNPRM* tentatively concludes that "where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges." *FNPRM*, ¶ 39. NARUC specifically endorsed such a requirement in its July 2004 resolution. Government-mandated charges should be listed in a section of the

customer's bill that is distinct and separate from other areas listing monthly recurring charges, usage-based charges, and other charges that carriers impose at their discretion.

The *FNRPM* also asks "how we should define the distinction between mandated and non-mandated charges for truth-in-billing purposes,"[3] and suggests two options: [a] "define government 'mandated' charges as amounts that a carrier is [sic] *required* to collect directly from customers, and remit to federal, State or local governments,"[4] or [b] distinguish "between government mandated and non-mandated charges . . . based on whether the amount listed is remitted directly to a governmental entity or its agent."[5] Under the second definition, the Commission noted, "'mandated' charges would differ from non-mandated ones in that non-mandated charges only would be composed of fees collected by carriers that go to the carrier's coffers, and which are not directly related to any regulatory action or government program.**"**[6]

Again NARUC's July resolution specifies that first option for defining government mandated charges is the superior choice. Defining government mandated charges as charges carriers are required to collect and remit to government is a narrower and more accurate definition that conforms to the commonly understood, and logical, meaning of what is "mandated" by the government and what is not. "Mandatory" is defined as "[r]equired by or as if by mandate; obligatory."[7] Average consumers understand this term quite well. Customer confusion is the end

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[3] Id.

[4] Id. at ¶ 40. Under this option, government mandated charges would include state and local taxes, federal excise taxes on communications services, and some state E911 fees. According to the Commission, non-mandated charges would consist of government authorized but discretionary fees, such as fees that carriers remit pursuant to regulatory action, such as Telecommunications Relay Service ("TRS") and universal service charges, as well as administrative fees and other purely discretionary charges. Id.

[5] Id., at ¶ 41.

[6] Under the second option for defining government mandated charges, universal service charges would be considered mandated, though line items for administrative and other costs related to collecting such contributions would be considered non-mandated. Id.

[7] See The American Heritage Dictionary: Second College Edition 761 (1985); see also Webster's II New College Dictionary 664 (1995); Oxford American Dictionary 403 (1980).

result of adopting the definition of government mandated that conflates "mandatory" charges with "permissive" charges, as is the case with the second option.

Moreover, adoption of the 1st options' straightforward definition of government mandated charges should deter carriers from blaming the government for charges that they are not required to pass through to customers. The record developed in response to NASUCA's petition for a declaratory ruling clearly demonstrates the strong incentives carriers have to blame government, rather than themselves, for the charges their customers must pay. Finally, as the Commission recognized, defining government mandated charges to include only those charges carriers are required to impose and subsequently remit to the government is consistent with the Commission's earlier pronouncements in the context of Truth-in-Billing[8] and end-user charges imposed by carriers to recover their contributions to the federal universal service fund.[9]

FCC should not preempt States from establishing more stringent standards for consumer protection.

The *FNPRM* includes several tentative conclusions regarding "preemption of State billing practices regulations that are inconsistent with [FCC] truth-in-billing rules, guidelines and principles" and seeks comment regarding those conclusions, or the legal bases for those

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[8] In its original Truth-in-Billing order, the FCC recognized that labeling a line-item charge "mandated" when they are not makes it more difficult for consumers to understand their bills and undermines competition:

> "As the record in this proceeding demonstrates, line-item charges are being labeled in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills, thereby reducing their propensity to shop around for the best value. Consumers misled into believing that these charges are federally mandated, or that the amounts of the charges are established by law or government action, could decide that such shopping would be futile. In addition, lack of standard labeling could make comparison shopping infeasible. Unlike most products purchased by consumers, these line-item charges cannot be attributed to individual tangible articles of commerce. For example, when a consumer purchases socks from the local department store, the consumer knows what item the bill refers to, whether it describes the product as socks, men's wear, hosiery, etc. In contrast, a consumer receives no tangible product in conjunction with a line-item charge on his or her telecommunications bill."

TIB Order, ¶ 62 (emphasis added); see also id. at ¶ 63 (carriers should be prevented from misleading consumers into believing they cannot "shop around" to find carriers that charge less for fees "resulting from federal regulatory action") (emphasis added).

[9] The FCC has also discussed the obvious impact of allowing carriers to characterize universal service contributions as taxes or otherwise mandated charges when carriers have flexibility to recover such contributions through rates or surcharges. The Federal-State Joint Board on Universal Service wrote: